IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 205 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANA KHETA DAGARIA HARIJAN

Versus

STATE OF GUJARAT

Appearance:
MS SONA SAGAR for Petitioner
MS BR GAJJAR, APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH
and
MR.JUSTICE H.H.MEHTA

Date of decision: 17/02/2000

ORAL JUDGEMENT [Per M.S. Parikh, J.]

1. This conviction appeal arises from the impugned

judgment and order dated 21/2/1990 rendered by the Ld. Addl. Sessions Judge, Kutch at Bhuj in Sessions Case No. 78/1988. The appellant, the accused in the Sessions Case, came to be convicted for the offence punishable u/S. 302 of the Indian Penal Code (for short 'IPC') and sentenced to life imprisonment for he having committed murder of his wife Fulabai Rana at about 12.00 noon on 27/8/1988 by inflicting axe blows on the back side of her neck in the field known to the parties as Ganeshiya field in the outskirt of Sumrasar village of district Kutch.

2. The complainant Karsan Vasta who happens to be the brother of deceased Fulabai lodged his FIR to the effect that at the aforesaid time and place on 27/8/1988 said Fulabai had gone to the field in the company of her son Mavji and as she did not return home, the complainant and his brothers Lakhman and Rupabhai and other persons went to inquire about the matter. During the course of such inquiry they could trace out Fulabai in injured condition in the midst of standing millet crop in the field. There were injuries on the neck of Fulabai and she was lying in dead condition in the field. Keeping the dead body at the place they went to inquire about Mavji, but he also could not be traced out. That is how they had to approach the concerned police authority for the purpose of lodging the FIR after making search of Mavji and Mavji having not been found. The FIR was accordingly lodged at 1.00 a.m. (during the mid-night between 27/8/1988 and 28/8/1988). The complainant also disclosed before the concerned police authority that they were three brothers and a sister respectively Laxman, himself and Rupabhai and deceased Fulaben, who was got married with the accused at vilage Bhimasar, Taluka Anjar around 30 to 35 years before the date of incident. Initially they were residing at Bhimasar. However, for the last about 4 years (from before the date of incident) his sister Fulaben, the accused and their three children, namely Gopal, Dhano and Mavji went to reside in the vicinity of the complainant at village Sumrasan. The accused was not attending to any work properly and was beating complainant's sister Fulaben and continued to illtreat her in that manner even after they went to reside in the vicinity of the complainant who was making efforts to persuade the accused not to illtreat his sister. Around 4 days before the date of incident the accused was sleeping outside the house, his sons were also sleeping outside his house. It was around 1 to 1.30 at night when upon the bullock having bellowed (caused the noise) the complainant and others woke up and they saw the accused having climbed up the roof of the house. Upon being asked, the accused could not explain the

matter satisfactorily leaving the complainant and others to suspect something wrong. He, however, saw to the accused being mentally settled on that occasion. In the background of these facts the complainant expressed his suspicion in the FIR about the accused having done away with Fulaben, while asserting that he accordingly believed accused to have caused the death of his sister Fulaben.

3. P.S.I. Mr. Gaurishankar Joshi, Bhuj Taluka Police Station moved the investigation into motion. He had gone to the place of incident and since there was no facility of light he arranged police protection nearby the place where the dead body was lying. He continued to remain present there and sent other police persons to trace out Fulaben's son Mavji and the accused. Upon dawn setting, he made inquest upon the dead body of Fulaben and made arrangement for post mortem of the dead body. He saw to the Panchnama of the scene of offence being drawn, blood stained earthern portion being taken by way of samples from the place of incident, recorded the statements of witnesses who were present, seized victim's clothes which were blood stained after the post mortem was completed, saw to the Panchnama being drawn in that respect, recorded the statements of Dhanaji Rana and Dhana Vasta and proceeded furher in the investigation at vilage Bimasar, village Chakasar, village Lakhapar and other surrounding villages taking some persons from village Sumrasan with him. Upon the information received during the course of such investigation, the accused could be traced out at the house of Devraj Sura Harijan in village Bandhani on 29/8/1988 when he was called. He got up from the bed and tried to escape, but was apprehended. Immediately discovery of the Muddamal weapons could be had in the manner that the handle of the axe and the blade of the axe were discovered. The accused was accordingly arrested. Necessary Panchnama was drawn at the house of Devraj Sura Harijan and the statement of Deva Sura was recorded. When the Investigating Officer returned to village Sumrasan, he came to be informed that Mavji Rana was found and head constable Baldevsinh brought the boy before him. His statement was recorded. The Panchnama of the clothes which were put on by the accused at the time of commission of offence was also drawn. After the investigation was concluded, the accused was charge-sheeted and ultimately committed for his trial before the Ld. Addl. Sessions Judge, who after recording the evidence and hearing the parties as also considering the defence, came to the conclusion that the prosecution established beyond reasonable doubt guilt of

the accused as aforesaid and rendered conviction and sentence. That is how the accused is before this Court.

4. Ms. Sona Sagar, learned advocate canvassed the cause of the accused before this Court. On a commendable scrutiny of the evidence which she read before this Court she submitted that on a proper co-relation of medical evidence and the evidence of the only eye witness who should be treated as child witness, prosecution could not be said to have established the offence charged against the accused beyond reasonable doubt. The broad and main thrust of her arguments revolved round the discussion of the evidence of Mavji Rana P.W. 4 exh. 10 who happened to be aged around 14 years at the time of incident and around 16 years at the time when his evidence was recorded. According to her submission, evidence of Dr. Khemchand Bijalbhhai Parmar, P.W. 1 exh. 5 when he testified that there were two cut wounds on the back side of the neck causing internal injuries to the spinal cord and the victim was not likely to be saved even if immediate treatment could be made available to her would assume great deal of importance. It would, therefore, not be probable that Mavji Rana who was working ahead of her mother Fulaben (since deceased) to have witnessed accused giving either of the axe blows to his mother. Her submission is that even the first blow would have in the ordinary course of nature resulted into silencing down the victim so that it would not be probable for her to have screamed or shouted for help. She so submitted with reference to what Mavji Rana testified about the screaming of her mother to the effect "Mavla should rush since his father was killing her" (Gujarati). It would therefore be risky to rely upon the oral testimony of Mavji Rana.

5. Before Mavji Rana's oral testimony is taken up for consideration the submission that he is a child witness and could not be said to have been capable of giving evidence might be considered. It is not in dispute that he was 14 years of age when the incident occurred and 16 years of age when his evidence was recorded. It is no-doubt true that in any event he was below 16 years when the incident occurred. In this background it has been submitted that he should have been treated as a child witness and in the absence of corroboration his evidence ought to have been discarded as a matter of prudence. Reference in this connection has been made to a few decisions :

In State of Bihar v/s. Kapil Singh reported in AIR 1969 S.C. 53 the child witness was about 12 years of

age and the Apex Court observed that such a witness could often be expected to give out a true version because of his innocence, but there would always be danger in accepting evidence of such a witness that he or she might have, under influence, been coached to give out a version by persons who could exert influence on him or her. Two propositions flow from this decision relied upon by Ms. Sagar, learned advocate for the accused. Firstly the Apex Court has observed that a child of the age of 12 years can often be expected to give out a true version of the incident because of its innocence, secondly while assessing the evidence of such witness possibility of exertion of influence by the relatives and tutoring of such witness by them cannot be ruled out. In so far as this second aspect is concerned, the evidence of Mavji Rana in the present case will require consideration.

Next is in the case of Prema Dukpa v/s. State of Sikkim reported in 1981 Cri. L.J. 276. Although this is not canvassed in respect of a witness who would be a child witness, it has been submitted from this decision that uncorroborated evidence of a solitary witness (in this case a boy of tender age) would merit careful consideration, although such an evidence can be made the sole basis of the conviction.

The last one is in the case of Nirmal Kumar v/s. State of U.P. reported in 1993 S.C.C. (Cri.) 289. It may be noted that the child witness before the Apex Court was 7 years of age. In that background the Apex Court has observed that testimony of such a witness should be examined cautiously and the Courts should find some corroboration.

Ms. Sagar's attention was drawn to the case of Tehal Singh v/s. State of Punjab reported in AIR 1979 S.C. 1347, where while dealing with the oral evidence of child witness of 13 years of age, the Apex Court had an occasion to make following observations :-

> "In our country and particularly in the rural areas it is difficult to think of a lad of thirteen years as a child. A vast majority of boys round about that age go to the fields and do men's work. They are certainly capable of understanding the signifinace of the oath and the necessity to speak the truth."

Pausing for a moment here it might be recollected that Mavji Rana was 14 years of age at the time of incident and 16 years of age at the time of giving his evidence

and he has been cross examined by the learned advocate appearing for the accused at length. The Ld. Addl. Sessions Judge has not found this witness to be a child witness incapable of understanding and giving account of what he witnessed. It has been submitted explaining the aforesaid decision that aforesaid facts disclosed by the witness, namely he turned back when he heard his mother's screaming and calling him to rush there as his father was killing her, in the background of the fact that she was given two fatal blows of axe on the back side of her neck, cannot be said to be natural. However, this submission will again be in the realm of appreciation of evidence of Mavji Rana and that exercise we will presently enter into.

Next is the decision in the case of Prakash v/s. State of M.P. reported in AIR 1993 S.C. 65, where the Apex Court has reiterated that a boy of only 14 years of age could give proper account of a murder of his brother after he had an occasion to witness the same and simply because he was 14 years of age, it would not be proper to assume that he was likely to be tutored. This observation would run counter to the submission in the present case that Mavji, 14 years of age was likely to be tutored by his maternal relatives. His detailed examination and cross-examination would prima facie show that he can hardly be treated as a child witness.

6. Now turning to evidence of Mavji Rana exh. 10 he has testified that he and his other two brothers were staying with their parents at village Sumrasar from before 2 to 3 years. His mother and brother Gopal were attending to the labour work. His father was occasionally working and occasionally not working. His father was ill-treating his mother while beating her. On account of such treatment being meted out by his father to his mother at village Bhimasar, they went to stay at village Sumrasar. With regard to the incident Mavji has deposed that his father killed his mother in the field when he was present there. He and his mother had gone to attend to the work of weeding of grass and when he was busy working, his father reached the field at around 11.00 O'clock in the morning when he turned back seeing his mother screaming " "
and thereby calling Mavla to rush there as his father was killing her. He saw that his father had given axe blow on the neck of his mother. He has deposed that immediately before that he must have given one blow to his mother. He has categorically stated that he saw the accused giving one axe blow to his mother. He tried to resist, but his father showed him the knife saying that

his mother was killed and that he would also be killed and that he should follow his advice to go and stand at Bhimasar Chakasar, somewhere on the way. He was accordingly made to run ahead of his father. His father ran after him. On their way they reached near a puddle. His father washed off the axe there. They then continued walking till it was sun set and moon rise when they reached near Abai hill. His father asked him to sleep since he was down with fatigue. His father had also given him Rs.20/- while saying that he should get lost in which case the money would be useful for his refreshment. He then slept and when he woke up in the next morning, he could not find his father. He heard noise of a rickshaw. He ran towards the road there and could notice that there was a bus stand where some 4 persons were standing. He asked the way of vilage Nadapa where parents-in-law of his brother Gopal were staying. Upon having been shown the way he went there. Gopal's mother-in-law received him. He informed her about what happened. She also told him that had he informed her a little earlier, he would have been sent in a bus to his village. He, however, told her that he had swelling on his legs and wanted to take rest as he was made to run. He accordingly slept there. During the evening time when he woke up he was offered the meals. After taking the meals he had passed the night there. During the night time two police persons in the company of his brother Gopal and Vela Haja reached there and brought him at village Sumrasar. He has also referred to the incident which occurred around 5 days before the date of incident to which the complainant has spoken in his complaint as well as in his oral testimony. He was then shown the Muddamal article no. 5 being the axe and he replied that he could not say that it was the same axe, but it was like the axe used by the accused in killing his mother. He identified the Muddamal clothes of his mother, but Muddamal article no. 4 was stated to be not of his mother. It has appeared in the evidence that there was a mistake in bringing some other Muddamal article no. 4 than the real Muddamal article no. 4. He also identified the Muddamal clothes which were put on by his father at the time of incident. Muddamal article no. 9 was the Pyjama which was put on by his father at the time of the incident and contained blood stains. In his cross-examination he has admitted that he was studying in the school. His brother Dhanaji was also studying in the school at Bhuj. His brother Gopal was accompanying his mother for the labour work. They were providing for the education cost of himself and his other brother. His maternal uncle was not providing for such education cost. He has however admitted that the field in which his mother was working belongs to his

maternal uncle and the house in which they were residing was also constructed by them on the land belonging to his maternal uncle. He admitted that around 4 years before the date of incident his maternal uncle had called them to village Sumrasar and they were under the shelter of his maternal uncle. He categorically said that he did not know if there was any enmity between his father on one side and his maternal uncle on the other side. He also did not know that his maternal uncle did not like his father to stay at vilage Sumrasar and that none from the village Sumrasar liked his father to stay there since he belonged to village Bhimasar. He has been cross-examined at length with regard to how one could proceed from the place of incident to Bhimasar Chakasar and that while going to the said village one has to pass through village Sumrasar. However, the witness did not know if village Sumrasar would be on the way to village Bhimasar Chakasar while going to the field in question. He denied the suggestion that his father was keeping ill from before the date of incident. He, however, could not say whether his father was aged 50 or 55. He admitted that had he thought running towards village Sumrasar he could have run there. He testified that it would take around one and quarter hours for reaching the field in question from village Sumrasar. He denied that one would reach village Sumrasar from Abai hill earlier than to vilage Nadapa. He admitted that except the 4 persons whom he saw near the bus stand, he did not see anybody else on his way to village Nadapa. He admitted that he did not directly talk his brother's mother-in-law about the incident but he talked about it after taking rest and after taking his meals. It was at around 12 noon when he accordingly informed about the incident. When he woke up he took his meals and then talked about the incident to his brother's mother-in-law. Police persons reached there at around 8 O'clock at night on that day and they had taken him to village Sumrasar via Bhuj police office, where he was questioned. He admitted that the police did not record anything there (at Bhuj police office). He denied te suggestion that his father was attending to the work in the field for the whole day, that on account of his ill-health during evening time he had gone for taking medicines and that he was giving evidence at the say of his maternal uncle and village people. He denied the suggestion that his father did not kill his mother and that his father was falsely implicated as none in the village Sumrasar liked his father's presence there. Then the correct Muddamal article no. 4 was brought before the Court and the witness identified the same to be that of her mother. He also admitted in the cross examination that similar type of saree (Sadlo) was being put on by

any female person in the caste.

7. The aforesaid evidence would clearly indicate both the innocence displayed by the witness as well as the natural rendition of the incident which he had seen and what happened to him thereafter. The witness has described the incident having occurred in a fraction of the moment when he had an occasion to turn back immediately upon hearing of screaming of his mother as aforesaid and the witness has frankly admitted that one blow had already been landed on the neck of his mother and he saw giving of the second blow and that occurred within no time. It cannot be said that immediately upon striking of the blow the victim could never have that consciousness to sream or to shout. That all is the physical reaction which might in the natural course arise when one is struck with a deadly weapon. It might be noted that while screaming the mother of the witness uttered the aforesaid words, which were also quite natural indicating the presence of the witness there and indicating what happened at the spur of the moment. Simply because the medical witness testified that each of the blows was capable of causing death and no amount of immediate treatment could have saved the victim, it cannot be inferred that the victim was rendered instantaneously incapable of screaming out. No such cross-examination has been directed in the evidence of the medical witness.

8. Commenting further upon the aforesaid evidence of Mavji it has been submitted that his is unnatural account of what happened to him after the incident. It has been submitted that ordinarily he would have immediately informed about the incident to the mother-in-law of Gopal. Similar is the argument about the witness having run as directed by his father and not to escape so as to immediately inform about what happened. In our considered opinion, there is nothing unnatural about this conduct on the part of the witness Mavji. Firstly he was under a fear arising from the threat of his father at the point of knife. Secondly the assailant was none else than his father. Psychological imbalance on the part of the witness would be the natural consequence so as to lead the witness to act as directed rather than to act on his volition. In our considered opinion there is no escape from accepting the submissions made by the Ld. APP and the conclusions drawn by the Ld. Addl. Sessions Judge that the witness Mavji has rendered a truthful account of what he witnessed. His is an innocent and natural rendition of the incident which he had the occasion to witness. He has withstood the

cross-examination as can be seen from his evidence. Ordinarily in the background of what he has testified, his evidence could hardly be said to need any corroboration. But then, the facts of the present case would indicate that there is abundance of corroboration to the evidence of this witness.

We may firstly revert to the circumstances which would lend natural corroboration to the ocular account of Mavji Rana. Firstly he is made to run from the field in question and go to the place narrated by him and ultimately to village Nadapa where Gopal's mother-in-law was residing. That is one side of the picture. Finding that his sister and sister's son Mavji had not returned home till late in the evening, complainant had also the occasion to rush for making inquiry about them and ultimately during night time they could spot out the dead body of Fulaben in the field where she went to work and then the complainant was required to rush to the police station as can be visualised from his complaint exh. 26 and his oral testimony exh. 9. This is the second side of the picture. The investigation is directed naturally towards the scene of offence near village Sumrasar as also simultaneously for finding out missing Mavji Rana and missing accused. Mavji Rana was then brought via Bhuj police station to village Sumrasar and Investigating party ultimately reached village Bandhani from where the accused could be spotted out from the house of witness Devraj Sura, who ofcourse did not support prosecution. However, the respective panchnamas speak for themselves. All these circumstances occurred in the natural course of events. This is clear from the reading of the evidence as a whole. They clearly lend support to the ocular account of Mavji Rana. That apart, find of blood on the clothes which the accused had put on tallies with the blood group of deceased Fulaben. This can be seen from the F.S.L. report appearing at exh. 29 read with chemical examiner's report exh. 30. Ld. APP has drawn our attention to these two vital documents and in our considered opinion they clearly corroborate the ocular account of Mavji Rana.

9. Then there are circumstances flowing from the previous history which has not only been rendered by eye witness Mavji Rana, but also by the complainant. It is not in dispute that the accused, a cobbler, was unable to maintain himself and his family at his own village. Instead it has come in evidence that he had frequent occasions to beat deceased Fulaben which resulted into bringing the family at village Sumrasar where they were staying for around 4 years. It cannot be accepted that

the village people and the complainant did not want the accused to stay there and yet he stayed there for 4 long years. Instead, as it is common in Indian society, a brother is usually anxious to see his sister's happiness and would sustain any amount of aggression or ill-treatment from her husband in his quest for seeing that his sister and her family gain happiness in life. That is exactly what appears to have happened to the family to which the victim and witness Mavji belong. 4 to 5 days before the date of incident the accused had an occasion to climb up the roof of the house where he was staying. He was unable to render any satisfactory account of having climbed up the roof during mid-night. It has been submitted by Ms. Sagar that there is a sort of improvement in the manner in which he was found climbing the roof of the house. There is no mention about he holding in his hand the knife at that point of time in the complaint/FIR. As against this, the complainant as also witness Mavji testified that he held knife in his hand while he was found at mid-night on the roof of the house trying to enter into the house through the roof. In our considered opinion, if that was the improvisation, it could not be said to be far from what actually must have happened. It can be seen from Panchnama exh. 17 that even the knife also could be found when the accused was traced out from the house of witness Devraj Sura at village Bandhani. The accused was thus also keeping with him knife. Besides, there is consistency in the rendition of what happened to Mavji. He was threatened with knife by his father when the incident occurred and that made him run at the say of his father towards the direction shown by his father. All these circumstances, would indicate that Mavji Rana clearly appears to have told the truth about what happened.

10. In so far as the Panch witnesses are concerned, it has been submitted that the Panchas could have been found from village Bandhani instead of taking Panchas from village Sumrasar. Village Bandhani is not the village where the accused ordinarily resided and, therefore, the I.O. could have found independent Panchas from that village. Thus, the discovery Panchnama and Panchnama with regard to the clothes of the accused would suffer from the vice of not taking the Panchas from the same village from where the Muddamal weapon and the Muddamal clothes were noticed. Reliance has been placed on the provision contained in section 100 (4) of the Criminal Procedure Code, which would read as under :-

"100 (1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx
(3) xxx xxx xxx xxx

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) xxx xxx xxx xxx
(6) xxx xxx xxx xxx
(7) xxx xxx xxx xxx
(8) xxx xxx xxx xxx "

It is true that before making search two or more independent and respectable inhabitants of the locality in the place to be searched is situate or of any other locality if no such inhabitant of such locality is available or is willing to attend and witness the search need be called. However, variety of circumstances might intervene in the matter of carrying out of search. Present is a peculiar case where the investigation was required to be carried out in different directions. In the first instance the police was required to go to village Sumrasar, particularly to the field where the dead body was lying. Simultaneously search of missing Mavji as well as missing accused was also to be carried out in other direction. While at village Sumrasar it became necessary to have the Panchas for making Panchnama of the scene of offence and collection of blood stained articles (earthern portion). It would be natural for the investigating agency to take the Panchas with them when the search was also on for missing Mavji and missing accused. Therefore, in the natural course of events the Panchas were with the Investigating Officer when accused was spotted out at village Bandhani. We will presently deal with the evidence of Panch witnesses so as to find out whether they have rendered reliable account of what they witnessed. Bearing in mind all the circumstances Ms. Sagar's attention was drawn to the observations of the Apex Court firstly in the case of Ronny v/s. State of Maharashtra reported in (1998) 3 S.C.C. 625. It has been observed that a witness of search other than the one from the locality even if he has been brought by the

investigating agencies alongwith them cannot be disbelieved only on the ground that he was not of the locality where the search took place. His evidence could be rejected if it suffers from any serious infirmities or there is any inherent inconsistency in the testimony. However, if there is intrinsic merit in his evidence, the same cannot be rejected only on the ground that he is not of the locality of the search. It is true that for the purpose of tracing out the credit worthiness or otherwise of the witness, his evidence has to be scanned. In Sama Alana Abdulla v/s. State of Gujarat reported in (1996) 1 S.C.Cit has been observed that the prosecution explained why the Panch witnesses were taken from other place and the reason given by the prosecution that the village where the raid was to be carried out was quite small and inhabited mostly by relations of the appellant and it would have been too difficult to find an independent witness from that place, was found acceptable. Thus taking of witnesses from other place was found to be of no consequence. It would therefore be clear that number of circumstances might arise for consideration when S. 100 (4) of the Criminal Procedure Code is shown to have not been strictly complied with.

11. As observed earlier, the Panch witnesses had the occasion to accompany the Investigating Officer in the natural course of events. They were Vera Vasta (since deceased) and Khima Sava. Khima Sava has been examined as P.W. 6 at exh. 15. He has deposed that police called him as a Panch in the first instance at village Sumrasar Panchayat for making the Panchnama of the clothes which were put on by deceased Fulaben. The clothes contained blood stains. That Panchnama was placed in evidence at exh. 16. Thereafter, he had an occasion to act as a Panch at village Bandhani where the accused was apprehended. Witness has deposed that the accused was present at the house of Devrajbhai Musabhai where he was sleeping and the police woke him up. The blade of the axe and the knife were lying in the cot (under the pillow) and the handle of the axe was lying under the cot. The clothes which the accused had put on contained blood stains. All these articles were seized in presence of both the aforesaid Panch witnesses and Panchnamas exhs. 17 and 18 were drawn. Referring to the cross-examination of this witness, aforesaid submissions referable to S.100(4) of the Criminal Procedure Code have been made. The circumstances flowing from this part of the evidence might be noted : During the same night they had started from village Sumrasar to Bandhani. The witness has frankly admitted that before the pillow was

lifted the axe was not visible. He denied the suggestion, however, that the Panchanamas were written at village Sumrasar at a time. Considering the size of the handle which has been narrated by the witness in his evidence, it would be quite natural that the handle might have been separated by the accused while taking axe with him and it was obvious that the same was discovered from below the cot and blade was discovered from below the pillow in the cot. The Ld. Addl. Sessions Judge has considered the evidence of this witness in the light of all the circumstances and having gone through the same, it is difficult to agree with the submission of the learned advocate for the accused that the witness is not telling the truth. It is a fact that the witness had an occasion to accompany police from village Sumrasar to village Bandhani during the night time. Hence, there is no reason to discard the evidence of aforesaid Panch witness only on the ground that he belongs to village Sumrasar.

12. Dr. Khemchand Bijalbhai exh. 5 has been examined in respect of the post mortem performmed by him on the dead body of the victim. Post mortem report is at exh. 6. We have already referred to the Panchnamas exhs. 13, 16 and 17 and the evidence of the Panch witness Khima Sava exh. 15. Another Panch witness to the scene of offence Panchnama is Karsan Vasta exh. 12. Besides, Gopal's mother-in-law, Premabai (she has been referred to as the mother-in-law because Gopal has already been engaged to the daughter of Premabai) has been examined at exh. 19 and in material respects she corroborates the evidence of Mavji Rana. Devraj Sura from whose house accused was apprehended has been exammined at exh. 20 and it would be interesting to note from his evidence that when the police raided his house and asked about the accused, he came to know that the accused had stayed over in his house after having escaped after committing the offence. It is thereafter that he has not supported the prosecution by saying that he had seen one stick with him and nothing else. He was permitted to be questioned by the Ld. P.P. and then his earlier statement with regard to place from where blade of axe and knife below the pillow in the cot in which the accused slept were found was referred to him and the witness denied that suggestion although the Investigating Officer has said that such a statement was made by the witness in his earlier rendition. Even though the witness has not supported the prosecution on one of the material aspects of the prosecution case, he has supported the prosecution case on a very vital aspect, namely that the accused was apprehended from his house.

That would lend support to the natural course of investigation that was followed by P.S.I. Mr. Joshi, P.W. 9 exh. 25 while continuing to keep with the above Panch witness. We have already referred to the facts of the complaint and the complainant's evidence as also investigating officer and his investigation in the narration part of the prosecution story. Nothing substantial has been brought out from the cross-examination of both the witnesses, namely P.W. 3 Karsan Vasta exh. 9 and P.W. 9 Gaurishankar Parshotam Joshi, Investigating Officer exh. 25. It has however, been submitted that there was a road touching the field in which the incident occurred and, therefore, the prosecution could have brought independent witnesses for unfolding the story with regard to the homicidal death of Fulaben. It has appeared in the prosecution evidence and it cannot be disputed that it was rainy season. Besides the millet crop of the height of 3.5 to 4 ft. was standing in the field. The victim must have been in a bent condition while weeding grass from the space in the midst of the millet crop and it cannot be said to be improbable that there might be or might not be passers by on the road and if they were passing on the road, they might not be in a position to visualise what happened at the relevant point of time. It has also been submitted that after nearly 8 hours of the actual time of occurrence the dead body was spotted out by the complainant and other persons and they found blood oozing out of the wounds the victim sustained. It has been submitted that the blood could not have been in that form. It would have clotted and dried. The complainant and other witnesses who have spoken to that part of the prosecution story are villagers and appearance of blood might have been described by them as blood oozing out of the wounds. In that view of the matter, only this circumstance will not tend to disturb the evidence of complainant exh. 9.

13. The sum and substance of the prosecution evidence in the present case is that there is ocular account of the incident by boy of tender age and he has withstood the cross-examination. His innocence and natural rendition of the incident appear on the face of his evidence. He stands corroborated by number of circumstances as noted hereinabove. The report of the F.S.L. as well as report of Chemical Examiner lend scientific corroboration to the aforesaid evidence and there is no such material as would dislodge the ultimate conclusion of the Ld. Addl. Sessions Judge finding guilt of the accused having been established beyond reasonable doubt.

In the result and in the facts of the case, this appeal cannot be allowed.

13. With regard to sentence it has been submitted that the accused is a broken man. More than 11 years have passed since he has been in jail. He has suffered agony with apprehension, on account of the fact that the appeal remained pending for such a long period. Hence, some indulgence should be shown in the matter of sentence. Reliance has been placed upon some observations appearing in para. 91 of Kartar Singh's case (1994 Cr.L.J. p. 3175):-

"91. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right of life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure."

The observations dealt with concept of speedy trial guaranteed and preserved under our Constitution and such a right of speedy trial is stated to begin with the actual restraint imposed by arrest and continues at all stages including appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. Since the appeal is now finally disposed of, there is no question of applying these observations when minimum sentence u/S. 302 is life imprisonment which has been awarded to the accused.

This appeal is, therefore, dismissed.

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PVR.